

COLUMBIA

CHARLESTON

FLORENCE

GREENVILLE

Haynsworth
Sinkler Boyd, P.A.

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BELTON T. ZEIGLER
DIRECT DIAL NUMBER 803.540.7815
EMAIL beltonzeigler@hsblawfirm.com

January 11, 2007

VIA EFILING AND HAND DELIVERY

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: Application of Wyboo Plantation Utilities, Inc. for Adjustment of Rates and Charges
For the Provision of Water and Sewer Services
PSC Docket No.: 2005-13-WS

Enclosed for filing please find the original and one (1) copy of the Petition to Intervene on Behalf of John C. Bruffey, Jr. and Deer Creek Plantation Properties Incorporated and the Affidavit of John C. Bruffey, Jr.

Please note that the attached documents are exact duplicates, with the exception of the form of the signature, of the e-filed copy submitted to the Commission in accordance with its electronic filing instructions.

Please date stamp the one extra copy for our office and return it to me via our courier.

Please let me know if you have any questions.

Sincerely,



Belton T. Zeigler

BTZ/bcb

**THIS DOCUMENT IS AN EXACT DUPLICATE,
WITH THE EXCEPTION OF THE FORM OF THE
SIGNATURE, OF THE E-FILED COPY SUBMITTED
TO THE COMMISSION IN ACCORDANCE WITH ITS
ELECTRONIC FILING INSTRUCTIONS**

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No.: 2005-13-W/S

IN THE MATTER OF:

Application of Wyboo Plantation)	PETITION TO INTERVENE
Utilities, Inc. for Adjustment of)	ON BEHALF OF
of Rates and Charges for the Provision)	JOHN C. BRUFFEY, JR. AND
of Water and Sewer Services)	DEER CREEK PLANTATION
		PROPERTIES INCORPORATED

Pursuant to Rule 103-836 of the Regulations of the Public Service Commission of South Carolina (the "Commission"), John C. Bruffey, Jr. and Deer Creek Plantation Properties, Incorporated (hereafter "Petitioner") hereby petitions the Commission to intervene as a party of record in the above captioned proceeding. In support hereof, Petitioner shows as follows:

Introduction

1. Wyboo Plantation Utilities, Inc. ("Wyboo") is a public utility, as defined by S.C. Code Ann. § 58-5-10(3) (Supp. 2005), providing water and sewer service to the public for compensation in certain areas of South Carolina pursuant to rates approved by the Commission in Docket 96-227-W for water service and Docket No. 97-391-S for sewer service and is therefore a public utility subject to the jurisdiction of the Commission.

2. As detailed below, Petitioner's property is part of Wyboo's service area.

3. Petitioner's immediate interest in this case concerns service to 69 Lots in Deer Creek Subdivision, Phase II (the "69 Lots"). Wyboo has unused water and sewer capacity that can serve Petitioner's need for service to the 69 Lots without any additional plant construction.

4. As detailed below, through the rates and charges contained in its Application in this matter, and in correspondence with Petitioner, Wyboo is seeking or has sought to recover

from Petitioner and the purchasers of the 69 Lots approximately \$614,950 in non-recurring charges for establishing service even though no new plant is required.

5. The purchase price paid by the current owner of Wyboo for the entire utility system was only \$250,000.

Procedural History

6. On January 7, 2005, Wyboo filed an application with the Commission seeking a new schedule of rates and charges for water and sewer service for its customers in Clarendon County, South Carolina.

7. The Commission assigned Docket No. 2005-13-W/S to this matter.

8. Wyboo then withdrew that application and filed the current application on August 17, 2006.

Standing

9. Petitioner is the principal in Deer Creek Plantation Properties, Incorporated, the developer of the 69 Lots. Petitioner has sold the 69 Lots to a builder/developer but will only be paid as lots are sold to third parties. Petitioner continues to represent the development in matters related to water and sewer service, and continues to own the undeveloped portions of the tract. Petitioner has sought and holds in its name the construction, environmental and land-use permits related to the 69 Lots, and continues to act as the representative of the development in such matters.

10. The 69 Lots are subject to a purchase-money mortgage held by Petitioner and the 69 Lots could revert to Petitioner if development is thwarted by the unreasonable and excessive utility charges Wyboo seeks to collect.

Service Territory

11. Wyboo presently serves the initial phase of the subdivision known as Deer Creek Phase I or Blue Heron Point. Wyboo Utilities currently serves Clubway Commons, a part of Deer Creek Plantation. The current phase of the subdivision (Deer Creek II) was part of a single tract of land, called Wyboo Golf Club that was a single development at the time Wyboo established service to the tract.

12. All portions of Petitioners' subdivision is within Wyboo's sewer service territory which includes "customers in and near Wyboo Plantation Subdivision in Clarendon County, South Carolina and such further customers as may purchase lots therein." Petitioner's property is adjacent to Wyboo Plantation subdivision.

13. Wyboo has contractually agreed to provided service to Petitioner's property pursuant to letters attached hereto as Exhibit A. A letter and a map establishing that the 69 Lots are in Wyboo's service territory are attached as Exhibit B.

Unauthorized and Excessive Charges

14. On November 22, 2006, Wyboo sought to collect from Petitioner charges for water and sewer service which are unauthorized by Wyboo's current tariffs, are unjust, unreasonable and unduly discriminatory. A copy of the November 22, 2006 letter is attached hereto as Exhibit C.

15. Even though Wyboo will pay none of the costs of building water or sewer lines to serve the development, Wyboo is demanding a cash payment of \$172,500 for "contribution in aid of construction" and an "administrative" charge of \$25,000 to provide service to the area in question.

16. All plant capacity required to serve Petitioner's current phase of development is installed and functional. The service charges proposed by Petitioner in this case recover all the costs of such capacity.

17. In the application currently before the Commission, Wyboo seeks the following fees in addition to service charges:

- Connection fee of \$1,425.00 for each new water customer;
- Connection fee of \$1,425.00 for each new sewer customer;
- Plant Impact fee of \$1,600.00 for each new water customer;
- Plant Impact fee of \$1,600.00 for each new sewer customer.

18. The total plant impact fees and connection fees come to approximately \$6,050 per new customer or approximately \$417,450 for 69 lots comprising Deer Creek Phase II. These charges, plus the \$172,500 for "contribution in aid of construction" and the "administrative" charge of \$25,000 would lead to an overall cost of approximately \$614,950 for serving 69 homes in Deer Creek Phase II. This is approximately \$8,9123.00 per resident for water and sewer.

19. According to the contract by which the current owner of Wyboo acquired it, the \$614,950 that Wyboo seeks to recover from Deer Creek Phase II is more than double what the entire utility sold for in 2001, *i.e.*, \$250,000.00.

20. Petitioner asserts that allowing Wyboo to charge the plant impact fee and the contribution in aid to construction fee, as found in Wyboo's Application in this matter, is unjust and unreasonable. Further, it is unjust and unreasonable to charge water and sewer connections fees of \$1,425 where developers are required to install the water and sewer connections at their own expense. No expansion of the Wyboo plant facilities is required to serve the 69 Lots.

21. Therefore, Petitioner seeks to intervene to protect his interests and ability to obtain water and sewer service at fair and just rates approved by the Commission.

Representatives

22. Petitioner presently intends to present testimony and exhibits at any evidentiary hearing before the Commission in this Docket.

23. Petitioner's address is as follows:

John C. Bruffey, Jr.
Drew, Eckl & Farnham, L.L.P.
880 West Peachtree Street
P.O. Box 7600
Atlanta, Georgia 30357

24. Petitioner is represented by:

Belton T. Zeigler, Esquire
John P. Boyd, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201
803.540.7815

25. Petitioner believes that granting his request to be made a party of record in this proceeding is in the public interest, is consistent with the policies of the Commission in encouraging maximum public participation in issues before it, and should be allowed so that a full and complete record of this matter can be developed. Intervention at this stage will not prejudice any party.

26. Given the Petitioner's interests as described above, the Petitioner respectfully requests that he be permitted to intervene in this proceeding and present witnesses, arguments and cross examine witnesses in order to protect his interests.

Relief

27. In addition to other matters which may emerge at hearing or otherwise, Petitioner specifically requests that the Commission in its order in this matter:

- a. Preclude the charging of Contribution in Aid to Construction where new capacity is not required to be built;
- b. Preclude charging of tap fees in excess of \$50 dollars where the developer is installing the required taps at its expense;
- c. Require that Plant Impact Fee revenues be held in escrow for future plant expansions when expansion is required (not needed for the 69 Lots);
- d. Require in the approved Tariffs that Contributions in Aid to Construction be calculated to reflect the actual, verifiable capital cost of constructing the new capacity used to serve the customers in question after appropriate credit for the capital cost recovery implicit in the utility's rates.

WHEREFORE, for the foregoing reasons, Petitioner respectfully submits this petition for intervention in the above captioned proceeding and requests that he be permitted to participate with full rights as a party.

HAYNSWORTH SINKLER BOYD, P.A.

By: /s Belton T. Zeigler
Belton T. Zeigler
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201
803.540.7815

Columbia, South Carolina
January 11, 2007

EXHIBIT A

WYBOO PLANTATION UTILITIES, INC.
P.O. Box 2099
Sumter, SC 29102

Clarendon County Planning Commission
Manning, SC 29102
Attention: Maria Rose

Dear Ms. Rose:

This Letter is in reference to Deer Creek Plantation and Players Course Drive in Manning, SC. Wyboo Plantation Utilities does service water and sewer for this area.

If there are any further questions please contact Mark Wrigley at 774-2010.

Thank you,

President/Owner
Mark S. Wrigley

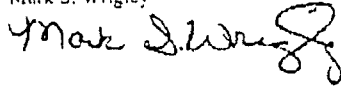
A handwritten signature in black ink, appearing to read "Mark S. Wrigley", written in a cursive style.

EXHIBIT B

Clarendon County
Planning & Public Service Commission

Post Office Box 1250, Manning, SC 29102
Telephone: (803) 435-8672 / 435-2105 Fax: (803) 435-2208

November 10, 1998

William T. Gregory
Wyboo Utilities Inc.
317 Plantation Drive
Manning, South Carolina 29102

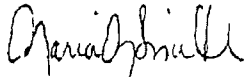
Dear Mr. Gregory:

This letter is in response to your request to extend water and sewer service to Wyboo Golf Club. At their November 9, 1998 County Council meeting, Clarendon County Council took action to approve Wyboo Utilities Inc.'s requested water and sewer franchise extension to cover the Wyboo Golf Club development.

Specifically, this franchise extension includes tax map parcel numbers: 163-00-01-015-00; 163-00-01-016-00; 163-00-01-017-00; 163-00-01-027-00; and portions of 163-00-01-028-00; 163-00-01-029-00; 163-00-02-001-00; 163-00-01-034-00 and 193-00-02-010-00 as delineated on the attached map.

Thank you for your cooperation in this matter. If I can be of any further assistance to you, please call me.

Sincerely,

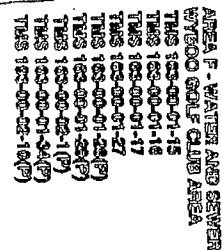


Maria M. Smith
Acting Director

Attachment

AEEAC - WATER ONLY - WHITE OAK POINTS

0 800 1600 2400
GRAPHIC SCALE



REVISION				
FORM	REV	DESCRIPTION	DATE	APPROVED
1		ADDED AREAS D AND E	4/28/88	
		ADDED AREA F	10/22/88	

WATER AND
SEWER SERVICE AREAS

EXHIBIT C

ELLIS: LAWHORNE

John F. Beach
Direct dial: 803/343-1269
jbeach@ellislawhorne.com

November 22, 2006

John C. Bruffey, Jr. Esquire
Drew, Eckl & Farnham, LLP
880 West Peachtree Street
P.O. Box 7600
Atlanta, Georgia 30357

RE: Request for Provision of Water and Sewer Service to Deer Creek II

Dear Mr. Bruffey:

I am writing on behalf of Wyboo Plantation Utilities, Inc. ("Wyboo") in response to your request for water and sewer service to the 69 platted lots near Wyboo Plantation which you have designated as Deer Creek II. This letter is a follow up to, and consistent with, our conversations earlier this year. As we have discussed, the letter I provided to you in July was for DHEC's use. This letter sets forth the details referenced in that letter.

Subject to the following conditions, Wyboo commits to provide service to your new development.

I. Design and Construction of Infrastructure

Deer Creek II will, at its expense, design and construct all sewage collection lines, pump stations, the connection to Wyboo's existing sewerage system, and any other necessary sewer appurtenances within the Development Tract (collectively, the "Development Tract Infrastructure"), necessary for Wyboo to make sewage service available to the 69 proposed lots. Deer Creek II agrees to submit its proposed engineering plans and specifications for each phase of the Development Tract Infrastructure to Wyboo for its approval, and then to the South Carolina Department of Health & Environmental Control ("DHEC") along with an application for a DHEC Construction Permit. Once the Construction Permit is issued, Deer Creek II will submit the final-approved engineering plans to Wyboo before it commences construction.

Deer Creek II will allow Wyboo to monitor the construction and track all funds and resources Deer Creek II expends to complete the project. Upon Deer Creek's completion of the Development Tract Infrastructure in accordance with the approved plans and specifications, Deer Creek II will transfer its ownership, and all easements associated therewith, to Wyboo free and clear of all liens and encumbrances, and Wyboo will thereafter own, operate, and maintain these facilities.

To the extent that the Development Infrastructure utilizes and includes STEP systems, grinder pumps, or any other system located on the customer's property, Deer

John C. Bruffey, Jr., Esquire

November 22, 2006

Page 2

Creek II will ensure that full title and ownership of these systems is decided over to Wyboo along with the Development Tract Infrastructure. Further, Deer Creek II warrants that, upon the sale of each lot or home within Deer Creek II, it will ensure that Wyboo's ownership of these systems is expressly set forth and reserved on each deed transferring ownership of such lots or homes to the new owner. Finally, in the event that such STEP systems or grinder pumps require electrical service, Deer Creek II warrants that the electrical service for each such system is installed in full compliance with Wyboo's specifications and all applicable electrical codes, and that each home owner is responsible to maintain and pay for this electrical service.

Deer Creek II will warrant the construction of the Development Tract Infrastructure for a period of one year from the date of completion.

2. Contribution in aid of construction

Upon issuance of the DHEC Construction Permit to build the Development Tract Infrastructure, Deer Creek II must make a \$ 138,000 contribution in aid of construction to Wyboo towards the reservation of sewer treatment capacity necessary to serve the proposed additional customers, and a \$34,500 contribution in aid of construction to Wyboo towards the reservation of necessary water service capacity. Wyboo bases this contribution in aid of construction on the proposed 69 customers times the approximate cost per customer of \$2,000 for treatment capacity and \$500 for water system capacity. Deer Creek II will make these payments into an escrow account, and Wyboo will refund the payments in the event that the regulatory approvals set forth below are not forthcoming. Deer Creek II must make these payments in a timely fashion in order for Wyboo to have any obligation to provide the service that is the subject of this agreement.

3. Regulatory Approval. Costs and Expenses

Wyboo agrees to seek approval from the South Carolina Public Service Commission ("SCPSC") to serve the additional customers. Deer Creek II will pursue approval from DHEC for Wyboo to add the requested additional customers onto its wastewater treatment system. While neither party warrants to the other that it will receive such approvals, both parties agree to use their best efforts to obtain such approvals, and the support the other party in any way reasonably necessary. Along with its Contribution in Aid of Construction, Deer Creek will make a single non-refundable payment to Wyboo in the amount of \$25,000 towards Wyboo's administrative costs and legal expenses associated with the negotiation of this service arrangement, and the necessary regulatory approvals.

John C. Bruffey, Jr., Esquire
November 22, 2006
Page 3

4. Tariffed Rates and Charges

Wyboo agrees to accept up to 69 new customers within the Development Tract as they tap on to the system and will provide service to those customers pursuant to the rates, rules and regulations in Wyboo's tariff on file with the SCPSC.

5. Conditions to the Parties' Obligations

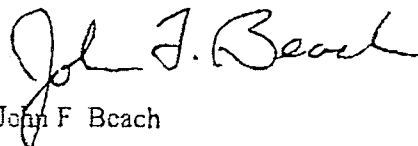
The parties' respective obligations under the arrangement set forth herein shall be subject to the following conditions:

- a. The parties must enter into a mutually acceptable Escrow Agreement setting forth the terms and conditions of the escrow arrangement mentioned in item 2 above.
- b. The parties must enter into a mutually acceptable Agreement that includes all of the terms and conditions set forth herein. Deer Creek II's signature on this letter adequately sets forth such agreement.
- e. Deer Creek must receive DHEC permit to construct the new Development Tract Infrastructure, such permit specifically allowing for the connection of all 69 new customers onto the Wyboo wastewater treatment system.

If this agreement is acceptable, please sign this letter below as indicated and return it to me. Once we have received your acceptance, Wyboo will draft a proposed Escrow Agreement and forward that to you for your review.

Wyboo looks forward to working with you towards the provision of service to your new subdivision.

Yours truly,



John F. Beach

JB/cr

cc: Mr. Mark Wrigley

IN RE:)
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)
)
Application of Wyboo Plantation Utilities, Inc. for)
Adjustment of Rates and Charges for the Provision)
of Water and Sewer Services)
)
)
)
)

**AFFIDAVIT OF
JOHN C. BRUFFEY, JR. AS
PRINCIPAL OF DEER CREEK
PLANTATION PROPERTIES
INCORPORATED**

[illegible]

1. I am the principal of Deer Creek Plantation Properties, Incorporated which is one of the developers and property owners of a tract of land known as Deer Creek Subdivision in Clarendon County, South Carolina.

3. As the principal in Deer Creek Plantation Properties, Incorporated, I have sold 69 Lots in Phase II of Deer Creek Subdivision (the “69 Lots”) to a builder/developer but will only

be paid for those lots as they are in turn sold to a third party. I hold a purchase-money mortgage on the 69 Lots. Problems with utility service are delaying infrastructure construction for the project and my eventual payment.

4. I have sought and hold in my name all the construction, environmental and land-use permits related to the 69 Lots, and continue to act as the representative of the development in such matters. The lots comprising Deer Creek Phase II could revert to me if development is thwarted by excessively high water and sewer charges. Delays in construction caused by Wyboo's actions are delaying construction of infrastructure for the development and are delaying payment to me for the 69 Lots.

5. Deer Creek Subdivision is part of a tract initially known as Wyboo Golf Club and the first phase of Deer Creek Subdivision is known as Blue Heron Point. Blue Herring Point is currently receives water and sewer service from Wyboo.

6. Deer Creek Subdivision is adjacent to Wyboo Plantation Subdivision.

7. Wyboo Plantation Utilities, Inc. presently provides water and sewer service to Blue Heron Point, Clubway Commons which is part of Deer Creek Subdivision, and Wyboo Golf Club as well as to customers in and near Wyboo Plantation Subdivision.

8. Wyboo Plantation Utilities, Incorporated contractually agreed to provide service to Wyboo Golf Club as early as 1998.

9. In a letter dated November 22, 2006, a true and accurate copy of which is attached to the Petition to Intervene as Exhibit C, Wyboo Plantation Utilities, Inc. sought to collect \$172,500 for "contribution in aid of construction" and an "administrative" charge of \$25,000 to provide service to Deer Creek Subdivision Phase II. Those charges would be in addition to the

charges and rates included in Wyboo Plantation Utilities, Inc.'s current application in Docket 2005-113-WS if approved.

10. Attached as Exhibits A and B to the Petition to Intervene are true and accurate copies of maps and letters establishing that the 69 Lots are located in Wyboo's service area. The lots are located North of Club Way Road.

11. When my attorneys raised the legal problems with Wyboo's demands for payments, and the fact that the 69 Lots are in Wyboo's service territory, Wyboo sought to cancel its commitment to serve the 69 Lots based on the pretext that the lots are not in its service territory. Attached as Exhibit C is a true and accurate copy of a letter from Wyboo's attorneys attempting to cancel Wyboo's commitment to provide service.

12. The Commission should not allow Wyboo to abuse its position as a monopoly public utility as it is doing.

FURTHER AFFIANT
SAYETH NOT.

s/John C. Bruffey, Jr.
John C. Bruffey, Jr.

Subscribed and sworn to before me
this ____ day of _____, 2007.

Notary Public

EXHIBIT A

ELLIS:LAWHORNE

John F. Beach
Direct dial: 803/343-1269
jbeach@ellislawhorne.com

January 10, 2007

VIA ELECTRONIC AND FIRST CLASS MAIL SERVICE

John C. Bruffey, Jr. Esquire
Drew, Eckl & Farnham, LLP
880 West Peachtree Street
P.O. Box 7600
Atlanta, Georgia 30357

RE: Request for Provision of Water and Sewer Service to 69 Platted Lots
ELS 1015-11397

Dear John:

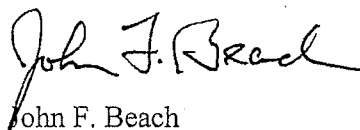
I am writing on behalf of Wyboo Plantation Utilities, Inc. ("Wyboo"). Last year you requested for Wyboo to extend its service area and system to provide water and sewer service to you for your development of 69 platted lots near Wyboo Plantation. During our early discussions you asked Wyboo to provide a letter for you to give to the South Carolina Department of Health and Environmental Control generally indicating a willingness to provide sewer service to your development of the 69 lots. Wyboo provided that DHEC letter on June 16, 2006. You asked for a similar DHEC letter for water service, and Wyboo provided that DHEC letter on June 29, 2006. On November 22, 2006, Wyboo sent to you a letter setting forth the detailed terms and conditions under which it would seek to extend its systems and its certificated service area, and provide water and sewer service to your proposed development of these 69 platted lots.

It is my understanding that you have now sold the 69 lots to another person or entity. I am writing to advise that Wyboo's offer to provide water and sewer service was specific to you, and limited to your ownership and development of those 69 lots. Since you no longer own the 69 lots, Wyboo hereby rescinds any offers or indications of service that it has made to you.

Wyboo will work with the new owner of the 69 lots towards an agreement through which it will seek to extend its systems and certificated service area and provide water and sewer service to the new owner's development of the lots.

With kind regards, I am

Yours truly,



John F. Beach

JFB/cr

cc: Belton T. Zeigler, Esquire [via electronic and first class mail service]
Mr. Mark Wrigley

IN THE MATTER OF:

Application of Wyboo Plantation)
Utilities, Inc. for Adjustment of)
of Rates and Charges for the Provision)
of Water and Sewer Services)

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the addresses shown below.

1. Petition to Intervene on Behalf of John C. Bruffet, Jr.
2. Affidavit of John C. Bruffey, Jr.

Parties of Record

Wendy B. Cartledge, Esquire
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, South Carolina 29201

Charles H. Cook, Esquire
Elliott & Elliott, PA
721 Olive Street
Columbia, South Carolina 29205

Scott Elliott, Esquire
Elliott & Elliott, PA
721 Olive Street
Columbia, South Carolina 29205

John F. Beach, Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202

Robert E. Tyson, Jr., Esquire
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina, 29211

HAYNSWORTH SINKLER BOYD, P.A.

By: s/Margaret A. McClintock
Margaret A. McClintock
Paralegal

Date: January 12, 2007